



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,086	10/08/2003	Hans-Peter Hohmann	20606 US (C038435/0111674)	7182
7590 Stephen M. Haracz BRYAN CAVE LLP 1290 Avenue of the Americas New York, NY 10104-3300			EXAMINER KAM, CHIH MIN	
			ART UNIT 1656	PAPER NUMBER
			MAIL DATE 03/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/681,086

Applicant(s)

HOHMANN ET AL.

Examiner

Chih-Min Kam

Art Unit

1656

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 27-30.
Claim(s) rejected: 23-26 and 32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: Interview Summary.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claim 31, under 35 U.S.C 112, first paragraph, scope of enablement and written description in view of cancellation of the claim; and the rejection of claims 27-30, under 35 U.S.C 112, first paragraph, scope of enablement and written description in view of amendment to the claim 23.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's reply does not overcome the rejection of claims 23-26 and 32 under 35 U.S.C 112, first paragraph, scope of enablement and written description .

In the amendment and response filed March 2, 2007, claim 23 has been amended, and claim 31 has been cancelled, thus claim 23-30 and 32 are pending. Claims 23-26 and 32 remain rejected under 35 U.S.C 112, first paragraph, scope of enablement and written description; and claims 27-30 are objected to because the claim is dependent from a rejected claim.

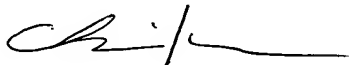
Applicants' response has been fully considered, however, the arguments are not found persuasive because claims 23-30 and 32 encompass "introducing a mutation causing a biotin autotrophy into a microorganism to control biomass production" in step (b) of the claimed method, in which the number of possible mutations for mutated genes that cause biotin auxotrophy is virtually endless, and the structures of recombinantly produced microorganisms of bacillus containing these polynucleotides are unpredictable. Since the specification only discloses the specific sequence of SEQ ID NO:1 for the mutated polynucleotides that cause biotin auxotrophy, and without structure/activity correlation on the mutated polynucleotide variants, a skilled in the art would not know how to choose a proper mutated polynucleotide that causes biotin auxotrophy from numerous number of polynucleotide variants, thus it requires undue experimentation to identify the sequence of the mutated polynucleotide variants that causes biotin auxotrophy. The lack of description on the structures of recombinantly produced microorganisms of bacillus that contain polynucleotide sequences causing biotin auxotrophy, and the lack of representative species as encompassed by the claims, applicants have failed to sufficiently describe the claimed invention (see also pages 2-13 of Office Action dated 9/26/2006).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Bragdon can be reached at 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D.
Primary Patent Examiner



CHIH-MIN KAM
PRIMARY EXAMINER

CMK
March 19, 2007